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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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House Week in Review

The House spent the overwhelming portion of its time this past week on three issues---economic development, welfare reform, and transportation improvements. On Tuesday, by special order, the House took up H. 3534, dubbed the "Enterprise Zone Act of 1995," a measure designed to create jobs in the state's depressed areas through offering of tax incentives to new or expanded businesses. Debate over H. 3534 centered not so much on whether the bill should pass but rather on the criteria an area should meet to be designated as an enterprise zone and the criteria a business should meet to receive these tax credits. Some 2 dozen amendments were offered to the bill; as examples, there were amendments proposed to designate as enterprise zones counties not located on an interstate highway, counties where more than 20 percent of residents work out of state, and to specify determination of costs when ensuring that the benefits of a business locating in these zones, for purposes of incentives, are greater than costs to the public. In the end, however, only a few amendments were adopted, including one which expanded the time period under which a census tract with a catastrophic loss of a certain number of jobs could be designated an enterprise zone. By voice vote, the House late Tuesday afternoon gave approval to the bill, with third reading being given the following day by a vote of 95-0.

Also by special order, on Wednesday the House debated H. 3613, a bill designed to enact comprehensive welfare reform in this state. Much of the debate over this bill centered on four matters---a limit on how long recipients could receive benefits, provision of a "safety net" for children of recipients who have their benefits cut off, availability of jobs, and unavailability of family planning services for recipients. Supporters of the time limits stated that these limits were needed to encourage recipients to become self-sufficient, and that taxpayers should not be stuck with the costs of providing benefits to recipients over an indefinite period of time. Opponents of the time limits, however, argued that these would especially hurt the children of recipients, and that with jobs lacking in many counties around the state, it was unrealistic to impose a time limit unless some effort was made to provide job opportunities for recipients. Some members also raised concerns that the bill did not provide for adequate family planning services, which several members viewed as essential to deterring additional births by recipients who could not afford additional children. While there was little disagreement on that point, the consensus was that the upcoming consideration in the House of the 1995-1996 state budget was the best time to consider provision of these family planning services. Following a long day of debate, the House voted 93-22 late Wednesday night

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to give the bill second reading. Among other things, this bill prohibits recipients from receiving benefits for more than 2 years in a 10-year period or 5 years over a lifetime; prohibits additional benefits for children born to recipients currently receiving welfare; requires minor mothers with children born out of wedlock to live in the home of their parent/guardian (except in certain circumstances) and requires recipients to sign agreements listing steps they will take, and a timetable, for becoming employed. The bill also provides for revocation of professional, drivers' and other licenses of persons in arrears of child support and contains a number of provisions to establish paternity and improve collection of child support.

The House concluded the week by taking up on Thursday H. 3666, a bill which would allow counties to implement a 1 percent local option sales tax or tolls for road construction and improvements. Much of the backing for this legislation came from House members representing Horry County (Myrtle Beach area), who pointed to the Grand Strand's critical need for more roads to allow for easier access by the growing number of tourists entering the area. Supporters noted that State funding for many desperately-needed roads in that area could not be expected for many years to come, and thus local efforts were needed to address this problem now; otherwise, many tourists would go to less congested areas in other states. Opposition to the bill came from several representatives who stated that a sales tax would hurt poor residents and who also claimed that the State should be the entity responsible for making these improvements instead of the localities. Approval of this bill came early Thursday afternoon.

While the 3 bills listed above, as noted earlier, took up the bulk of the House's time this past week, representatives also took up several other measures. Aside from the debate on welfare, perhaps the most controversial matter to come before the House last week was H. 3647, a bill to temporarily suspend the limitation on general fund appropriations as set in the 1993 "Carnell-Felder" act, under which additional revenues resulting from the suspension would be used for property tax relief. A motion made to recommit the bill to committee on Tuesday lost by a vote of 59-48, at which time objections from several House members placed the bill on the contested calendar. Debate on this measure resumed on Thursday, at which time the House, by 1 vote (54-53) voted to "continue" the bill (i.e., carry the bill forward to the 1996 session). Supporters of H. 3647 claimed it was needed to begin implementation of property tax relief, but opponents argued that passage of the bill would damage the state's credit rating. On Wednesday, the House voted to commit to the Labor, Commerce and Industry Committee H. 3124, a bill which would require persons under 17 to complete a driver's training course in order to obtain a driver's license. As originally introduced, the bill would have funded mandatory driver education through a surcharge of the annual premium for uninsured motorist coverage in liability policies; however, as the bill came out of the House Education and Public Works Committee, the bill did not include this funding source. With there being several questions and comments on the floor concerning affordability and funding of driver training courses, the House thought it

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would be best to commit the bill to the Labor, Commerce and Industry Committee for further review.

On Thursday, the House voted by special order to begin consideration of the proposed general fund appropriations for fiscal year 1995-1996 (under H. 3362) beginning on Monday morning, March 6. Debate on the budget is likely to consume virtually all the House's time this week, with second reading of the bill not expected at least until Thursday, or perhaps not until the following week.

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Bills Introduced

The following bills were introduced in the House last week. Not all bills introduced in the House are featured here. The bill summaries are arranged according to the standing committee to which the legislation was referred.

AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

Penalties for Mistreating Police Horses (H. 3704, Rep. Knotts). Current law prohibits anyone from killing, taunting, injuring or otherwise maltreating a police dog, a misdemeanor punishable upon conviction by fine of between \$500 and \$1,000 and/or imprisonment of between 30 days and 6 months. This bill would extend these prohibitions to police horses and make this law prohibiting maltreatment of police dogs and police horses a felony, with penalties increased so that upon conviction a person must be fined between \$2,000 and \$5,000, or imprisoned between 1 and 5 years, or both fined and imprisoned. (A related bill, S. 525, would make it a felony, with the same penalties as provided in H. 3704, to kill, disable, injure, etc. a police dog, although under S. 525 it would still be a misdemeanor to tease, strike or administer a drug to a police dog, punishable upon conviction by a fine of \$500-\$1,000 and/or imprisonment of between 30 days and 6 months. S. 525 is pending in the House Judiciary Committee.)

Migrant Farm Workers Commission (H. 3740, Rep. Davenport). This bill changes the name of the "Migrant Farm Workers Commission" to the "Migrant Farm and Seasonal Farm Workers Commission" and expands the membership of the Commission to include 1 active migrant or seasonal farm worker. The bill also revises reporting requirements to the Commission, so that any administrative or service agency, whether public or private, which receives state funds to provide services to migrant or seasonal farm workers, must file an annual written report with the Commission. This report must describe the amount of state funds received, inspection activities, services offered, the number of migrant and seasonal workers and their family members served, and other pertinent information as requested by the Commission. (Current provisions, which would be deleted under this bill, require administrative and service agencies which serve migrant and seasonal farm workers, whether or not the agencies receive state funds, to report to the Commission various information such as inspection activities, services offered, etc.).

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The bill also deletes provisions requiring (1) financial support used to serve these farm workers to be channeled through a Grants and Contracts Review Unit of the Budget and Control Board, and (2) all requests for food stamps by these farm workers or their families to be reported to the Commission.

Muzzleloader Hunts Authorized in Game Zone 2 (H. 3746, Rep. Carnell). This bill authorizes muzzleloader hunts in Game Zone 2 (Abbeville, Anderson, Edgefield, Greenwood, Laurens, McCormick, Newberry and Saluda Counties.)

EDUCATION AND PUBLIC WORKS

Deletion of Certain Provisions Concerning Violation of Mandatory Seat Belt Law (H. 3694, Rep. Wright). This bill deletes a provision under which, currently, a violation of the state's mandatory seat belt law does not constitute negligence per se or contributory negligence and under which a violation of that law is not admissible as evidence in a civil action.

South Carolina Protection of Family Privacy in Education Act (H. 3707, Rep. Fair). This bill is designed to protect students and families "from invasion of privacy and psychological experimentation by the educational system." Under these provisions, all instructional material (such as teachers' manuals, films, etc.) to be used in a class, course, program or project must be available for inspection by the parents or guardians of the children participating in the class, course, project or program (hereafter called "class"). Parents or guardians who object to the material being used in the class are permitted to exempt their children from use of the objectionable materials or to select an alternate class. Materials acceptable to the parent or guardian which relate to the same subject area may be substituted for the objectionable materials, and students exempted from use of materials or classes cannot be penalized for non-participation.

The bill prohibits students from being required, as part of a class, to submit to psychiatric or psychological testing, questionnaires, treatment, etc. without prior written consent of the student, if the student is an adult or an emancipated minor; however, prior written consent from the parent or guardian is required if the student is an unemancipated minor. The bill also prohibits examinations, tests, surveys or questionnaires from containing certain questions about an individual or family. As examples, the examination, test, etc. may not contain questions about political affiliations, illegal/anti-social behavior, religious affiliations or beliefs, personal information about siblings or parents, or income (unless the question concerning income is required by law to determine eligibility for participation in a program or for receiving financial assistance under such programs.)

The bill also prohibits the disclosure, dissemination or transfer of individual student information and records from the local school where the

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student is enrolled to a person, institution or agency without prior written consent of the parent or guardian, unless the student is seeking information to a school (in which case the records may be given to the requesting school). Schools or school districts are not exempt and may not be granted waivers from this disclosure requirement. Additionally, data collection on individual students for purposes of developing an individual education plan (IEP), or implementation of an IEP through computerized instruction or any other means, is prohibited unless the parent or guardian gives prior written consent.

Under these provisions, "psychiatric, psychological, behavioral or attitudinal examinations, etc." are methods of obtaining information, including group activity, which are not directly related to academic instruction and which are designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings. "Psychiatric, psychological, behavioral or attitudinal treatment" is activity involving the planned, systematic use of methods or techniques that is not directly related to academic instruction and that is designed to affect behavioral, emotional or attitudinal characteristics of an individual or group.

Students with Certain Grades May Participate in High School Teacher Cadet Programs (H. 3723, Rep. Moody-Lawrence). This bill allows students with at least an overall "C" average in all academic courses they have taken which count for purposes of high school graduation to participate in high school teacher cadet programs, if the students meet all other requirements of the program.

State Board of Education Must Develop a Certification Program (H. 3724, Rep. Moody-Lawrence). This bill requires the State Board of Education, acting through the State Department of Education, to develop a certification program which would certify teachers to instruct 3 and 4-year-old children pursuant to the Early Childhood Development and Academic Assistance Act and other applicable provisions of law. This program must be developed not later than the beginning of the 1996-1997 school year.

JUDICIARY

Mandatory Adjournment Date Delayed if Budget Bill Not Approved by Certain Date (H. 3691, Rep. H. Brown). Current law requires the General Assembly to finish its annual session by the first Thursday of June but further provides that the session is extended by 1 statewide day for each statewide day after March 31 that the House fails to give 3rd reading to the general appropriation bill (state budget). This bill requires the session to be extended by 1 statewide day for each statewide day after May 25 that the general appropriation bill has not been enrolled for ratification as an act.

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Jurisdiction of Town or City Police Officers Outside Municipal Limits (H. 3701, Rep. Simrill). Under current law, the police officer of a city or town may arrest a person who violates a municipal ordinance or State statute when the offense is committed within the municipality's corporate limits or within a radius of 3 miles of those limits and when the officers are in pursuit of the offender. If this bill is adopted, however, the jurisdiction of the municipal police when in pursuit of the offender would extend to the entire area of the county where the city or town is located.

Capital Punishment May Be Carried Out by Lethal Injection (H. 3703, Rep. Hallman). Under current law, anyone sentenced to death in South Carolina must be executed by electrocution (i.e., the electric chair). This bill would give another option for carrying out an execution, such that a person is executed either by electrocution or by lethal injection.

Motor Vehicles Traveling Through Parking Lots Must Yield Right-of-Way to Pedestrians (H. 3713, Rep. Fleming). This bill requires the driver of a motor vehicle traveling through a parking lot to yield the right-of-way to pedestrians traveling through that lot. Violation of these provisions is a misdemeanor, punishable upon conviction by a fine of not more than \$100 or imprisonment of not more than 30 days.

Completion of Treatment Program for Battering Spouses (H. 3718, Rep. Cobb-Hunter). Current law allows for suspension of all or part of a sentence for criminal domestic violence if the offender participates in a treatment program for battering spouses. This bill would require the offender to actually complete the program, rather than only requiring the offender to participate in the program.

Law Abiding Citizens Self-Defense Act of 1995 (H. 3730, Rep. J. Young). This bill provides for the issuance of concealed weapons permits by the State Law Enforcement Division (SLED) to South Carolina residents meeting certain requirements. For these purposes, a "concealable weapon" is one having a length of less than 12 inches, measured along its greatest dimension.

Under these provisions, a person seeking this permit must be at least age 21, must have been a resident of South Carolina for at least 180 days prior to application for a permit, and must provide proof of firearms training (such as through completion of a course offered by a law enforcement agency or completion of a hunter education course). The application fee is \$25. The applicant also must certify that he is not prohibited by state law from owning a weapon and that he understands that his permit must be revoked (and surrendered immediately to SLED) if he becomes prohibited under state law from possessing a weapon. If SLED determines that an applicant is not qualified to receive a permit, then SLED must issue a statement to the applicant specifying reasons for denial. Denials may be appealed to the Chief of SLED within 30 days from the date notice of denial was received. The chief must issue a decision within 10 days from the date the appeal is received, with an adverse decision subject

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to review by the Circuit Court. The permits are valid statewide but must be surrendered if the holder moves out of state. Permits to carry concealed weapons held by residents and issued by states which honor permits issued in accordance with these provisions must be honored by South Carolina.

The bill exempts from liability that may arise from issuance of a permit those medical personnel, law enforcement agencies and their personnel who in good faith provide information pertaining to a person's application for this permit. The bill also requires SLED to maintain a list of permit holders and the current status of each permit, with this information confidential and exempt from disclosure under the Freedom of Information Act. Permit holders must possess the permit identification card when carrying a concealed weapon and must present the card to a law enforcement officer upon request when the holder is carrying a concealed weapon. The bill also provides for replacement of missing or destroyed permit identification cards and requires holders who change address within South Carolina to inform SLED of such action.

Permits issued under this act do not authorize the holder to carry a concealed weapon into a facility or on board an aircraft where prohibited by state or federal law. The bill also specifies that this permit is not required for law enforcement officers (while carrying out their official duties), persons while on their property, hunting activities, etc., and that additionally the permit is not required in order to carry a non-lethal self-defense device (such as pepper gas) or to carry a concealable weapon in a manner not prohibited by law.

Revised Penalties for Driving with Canceled, Suspended or Revoked License (H. 3732, Rep. Martin). Current law requires a person convicted a second time of driving on South Carolina highways with a canceled, suspended or revoked license to be fined \$500 and imprisoned 60 consecutive days. This bill, however, would require a person convicted a second time for this offense to be either fined or imprisoned, but not both, and would reduce from 60 to 30 consecutive days the length of imprisonment for a second conviction. The bill also specifies that it is a misdemeanor to drive with a canceled, suspended or revoked license.

Offense of Obtaining a Signature or Property by False Pretenses (H. 3735, Rep. Rogers). Current law prohibits a person from obtaining (1) through false pretense or representation, another person's signature to a written instrument, or (2) another person's property with intent to cheat or defraud the owner of his property. (This crime is a felony if the value of the property is more than \$1,000 and a misdemeanor if the value is \$1,000 or less.) This bill would include in this crime attempts to obtain another person's signature or property in this unlawful manner, with the same penalties upon conviction as currently provided to persons who actually obtain the signature or property in such unlawful manner.

South Carolina Contraband Forfeiture Act of 1995 (H. 3737, Rep. Rogers). This bill declares as contraband personal property (such as

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weapons, vehicles, money, etc.) used in commission of or aiding in commission of a felony, with such property thus subject to forfeiture.

The bill makes it unlawful to conceal or possess any contraband article or to use motor vehicles, vessels or aircraft to transport or conceal contraband or to facilitate the sale, barter, exchange, etc. of contraband articles. Methods of transport, contraband articles and personal property seized in violation of these provisions accordingly must be seized and subject to forfeiture, with all rights and interest in and title to contraband articles or other property used in violation of these provisions vesting immediately in the State upon seizure by a law enforcement agency of this State. Under these provisions, it is presumed that the motor vehicle, personal property, etc. in or on which the contraband article is located at time of seizure is being used or was intended to be used to facilitate the transportation, sale of or other activities related to the contraband article. However, no property may be forfeited under these provisions if the property owner establishes he did not know nor should have known after reasonable inquiry that the property was being employed or likely to be employed in criminal activity. Additionally, a bona fide lienholder's interest cannot be forfeited if the lienholder establishes that he did not know nor should have known after reasonable inquiry that the property was being used or likely was being used for criminal activity, that use was without his consent and that the lien had been perfected in the manner prescribed by law before the procedure. If the lienholder's interest satisfies these requirements, then the court must preserve the lienholder's interest by ordering that interest to be paid from proceeds of the sale of the contraband articles.

The bill requires the solicitor in whose circuit the contraband articles, vehicles, etc. are seized to proceed against those items after final conviction (including appeals) is obtained or plea entered for the felony involved. Accordingly, the solicitor must file a petition to his local Circuit Court requesting forfeiture and sale of the seized property, setting out the facts and circumstances of the seizure and the felony committed. After hearing and upon determination that the property, etc. was used in violation of these provisions, the court must order the items forfeited and to be sold by the law enforcement agency making the seizure. The bill lists requirements by which the solicitor must abide in giving notice of the forfeiture of the property. When the order of forfeiture is entered by the court, the head of the law enforcement agency effecting the forfeiture must give notice of the sale, to be made by publication, and thereafter dispose of the property at public auction to the highest bidder for cash, without appraisal. Proceeds of the sale must be applied first to payment of balance due on any lien preserved by the court in the forfeiture proceedings; second to payment of costs incurred by the seizing agency in connection with storage, maintenance, security and forfeiture of the property; third to payment of costs incurred by the solicitor, and fourth to payment of costs incurred by the court. Remaining proceeds must be paid to the law enforcement agency which made the seizure. Purchasers of vessels,

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motor vehicles or aircraft sold under these provisions must be issued a title certificate by the State.

Requirements for SLED To Issue Concealed Weapons Permits (H. 3739, Rep. Fulmer). This bill authorizes SLED (State Law Enforcement Division) to issue licenses to certain persons for purposes of carrying concealed weapons or concealed firearms. Under these provisions, a "concealed weapon" or "concealed firearm" is a handgun, electronic weapon or device, tear gas gun, knife or billy, but does not include a machine gun.

An applicant for this license must meet the following requirements:

- (1) residency in South Carolina for at least 6 months preceding filing of the application;
- (2) be at least age 21;
- (3) not suffer from a physical infirmity that prevents safe handling of a weapon or firearm;
- (4) not be ineligible to possess a firearm;
- (5) not be a convicted felon;
- (6) desire a legal means to carry a concealed weapon or firearm for lawful self defense; and
- (7) demonstrate competence with a firearm (such as through firearms safety or training courses offered by law enforcement, the National Rifle Association, etc.)

The bill lists information (such as acknowledgment of competence in handling a firearm, fingerprints) which must be included in the application, with submission of false information or documents on the application a misdemeanor punishable by a \$500 fine. This application must be submitted to SLED with a \$100 nonrefundable license fee (if not previously been issued a statewide license) or a \$50 nonrefundable license fee for renewal of a statewide license. Within 90 days, SLED must issue the license or deny the application based on failure to meet the appropriate criteria (residency, age, firearms competency, etc.). If the application is denied, SLED must inform the applicant of the reason(s) for denial and of the applicant's right to an administrative hearing. SLED also must maintain an automated listing of license-holders, with this information to be available to local and state law enforcement agencies.

This license is valid throughout South Carolina for 3 years from the date of issuance, and the licensee must carry this license, along with valid identification, when he possesses a concealed weapon or firearm. The license and identification must be displayed upon demand by a law enforcement officer, with failure to carry such identification and license a misdemeanor punishable by \$25 fine. License holders must notify SLED when a license is lost/destroyed or when changing their permanent address, with failure to do so a misdemeanor carrying a \$25 fine. The license is invalid if lost or destroyed, although the person to whom the license was issued may obtain a duplicate upon paying \$15 to SLED and furnishing a notarized statement indicating the license has been lost or destroyed. SLED must revoke or suspend the license if the licensee becomes ineligible to hold the license

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under criteria of these provisions; develops or sustains a physical infirmity that prevents safe handling of a weapon or firearm; is convicted of a felony in any of the 50 states; or is committed to a mental institution. The bill also lists provisions governing renewal of licenses, with a license considered permanently expired if not renewed within 6 months following its expiration date, although that person may reapply for a new license as if he had not previously been issued one.

The bill also provides that these concealed firearms or weapons licenses do not authorize a person to carry such firearms or weapons into certain buildings and facilities. As examples, these licensees may not carry these concealed weapons or firearms into police or other law enforcement stations; jails; meetings of local governing bodies; secondary or elementary schools; or places licensed to dispense alcoholic beverages for consumption on premises. A licensee carrying a concealed weapon or firearm into such prohibited places is guilty of a misdemeanor, punishable upon conviction by a fine of not more than \$1,000, or imprisonment of not more than 1 year, or both at the discretion of the court.

The bill requires that all money collected pursuant to this act must be deposited in the State's general fund.

Penalties for Unlawful Practice of Dentistry (H. 3742, Rep. Harrison). This bill provides criminal penalties for practicing, in general, dentistry or dental hygiene or performing dental technological work, or for aiding or abetting a person in such practice, in violation of state law governing the practice of dentistry. Under these provisions, a person convicted of such unlawful acts must be fined not more than \$10,000, or imprisoned for not more than 2 years, or both, with each day the violation occurs being a separate offense. The bill also increases from \$1,000 to \$10,000 the maximum fine which may be imposed for specific violations of dentistry law (such as provisions governing work authorizations).

Special Purpose District Created for Historical Preservation May Convey Property (H. 3745, Rep. Harrison). This bill allows a special purpose district created for historical preservation to convey property. The bill also provides that any conveyance by a special purpose district before the effective date of these provisions is validated as a lawful conveyance.

Citizens' Arrest (S. 44, Sen. Courson). Under current law, a person may make a citizens' arrest when, among other situations, another person has entered a dwelling house "with evil intent." This bill deletes a provision pertaining to "evil intent" and in place of that language would state that a citizen's arrest could be made when a person enters a dwelling house "without express or implied permission."

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LABOR, COMMERCE AND INDUSTRY

Disclosure of Stipulations for Services Advertised as Being Available at Particular Price (H. 3706, Rep. Cain). Under these provisions, if any product or service is advertised as being available for a particular price and has stipulations attached as a condition of that price, then the advertisement must state that the price is subject to conditions or stipulations. Failure to make this disclosure is considered an unfair trade practice pursuant to the State's Unfair Trade Practices Act.

Periods During Which Medical Supplies and Treatment Must Be Furnished Under Workers' Compensation Laws (H. 3708, Rep. Clyburn). This bill revises provisions concerning furnishment of medical supplies and treatment under the State's Workers' Compensation Laws, as follows:

---Deletes a provision limiting medical and other treatment to a maximum period of 10 weeks from the date of an employee's injury.

---Deletes a ban on compensation when the employee refuses to accept treatment provided by the employer or ordered by the Worker's Compensation Commission.

---Allows an injured employee to make the initial selection of physician from among the State's licensed physicians, with the physician to be paid by the employer or Commission in the same manner as attending physicians designated by the employer or Commission are paid. The physician selected by the employee may arrange for consultation, referral or other specialized medical services as the nature of the injury requires. If the employee is unable to make a selection, then initial treatment required immediately following the injury must be rendered by an employer-selected physician, but after initial treatment the employee may select his own physician. Also provides that "medical, surgical, hospital or other treatment" under these provisions includes chiropractic treatment when requested by the employee.

---Provides that an employer's pecuniary liability for medical or other treatment includes such treatment provided by a physician selected by the employee. Additionally, charges as approved by the Commission constitute the full amount owed to health care providers, with the employer not liable for medical or other treatment provided by a health care provider selected by the employee unless the Commission has approved the treatment.

Regulation of Private Personnel Placement Services (H. 3716, Rep. Fulmer). This bill states that a temporary help service does not violate provisions of law which regulate private personnel placement services by indicating to a person engaged to perform a temporary service that the job or position to which the individual will be assigned has the possibility of becoming a permanent job or position.

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State Board of Registration for Professional Engineers and Land Surveyors May Promulgate Regulations To Require Demonstration of Competence for Registration Renewal (H. 3727, Rep. Bailey; and S. 532, Sen. V. Smith). These identical bills allow the State Board of Registration for Professional Engineers and Land Surveyors to promulgate regulations requiring registered professional engineers and registered professional land surveyors to demonstrate continuing professional competency in their respective fields as a condition for renewal of their registration or for re-registration.

Homebuyers Protection and Warranty Act (H. 3729, Rep. Wright). This bill is designed to protect new homebuyers by providing certain express minimum warranties which must be given when a seller disclaims implied warranties. For purposes of this bill, a "home" is a single to 4-family house, or a for-sale multiunit residential structure in which title to individual units is to be transferred to purchasers or a condominium unit; an "initial purchaser" is a person for whom a home is built or the first person to whom a house is sold for occupancy by him or his family as a residence.

Under these provisions, a home builder may provide an express written warranty to the initial purchaser, in which the builder warrants the following from the warranty commencement date with respect to the home:

(a) for 1 year, the home must be free from defects due to noncompliance with local building standards and free from defects caused by faulty workmanship or defective materials;

(b) for 2 years, the home must be free from defects caused by faulty installation of plumbing, electrical, heating, cooling and ventilating systems; and

(c) for 10 years, the home must be free from "major structural defects" (such as damage to the foundation, columns, etc.)

All or any part of this coverage can be provided by the builder by means of insurance coverage issued by the insurance company authorized to issue such coverage. The written warranty must require the builder or insurer, within reasonable time, to replace, repair or pay the purchaser the reasonable cost of fixing the defect. The choice of repair, replacement or payment may be made by the builder or insurer at its sole option, with repair of the defect allowed to be limited to repair of the elements necessary to fix the major structural defect and repair of items in the home damaged by the major structural defects.

The bill also lists items which may be excluded from the written warranty and insurance coverage. Among other items, the warranty or insurance coverage need not include defects in outbuildings (such as detached garages), driveways, fences, etc. or damage caused or made worse by normal wear and tear, weather-related damage (floods, lightning, etc.), or damage not reported to the builder or insurance company in a timely manner. The written warranty and insurance may limit the builder's and insurer's total liability to all purchasers for all defects, losses or damages to the initial purchase price. Additionally, the warranty and coverage must be automatically transferable without charge to a subsequent

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purchaser who acquires title to the home, provided that the transfer does not extend duration of coverage of the warranty or the insurance coverage. The warranty and insurance may also contain provisions for binding arbitration of any disputed claim.

The bill lists conditions under which a builder may fully disclaim all implied warranties (for example, if the minimum warranties as provided in this bill are in the contract between the builder and initial purchaser or contained in an insurance policy) and provides that any affected purchaser has a cause for action for actual damages if a builder or insurer fails to perform under terms of the warranty or insurance. Damages with respect to a single defect cannot exceed the reasonable cost of repair or replacement of the defect, and damages for all defects in the home cannot exceed the home's original purchase price. The purchaser also may be awarded attorney's fees not exceeding 20 percent of the amount received if the court or arbitrators find that the builder acted in bad faith.

These provisions provide the exclusive remedies, warranties and limiting periods as between a builder and all purchasers and subsequent purchasers pertaining to construction of homes and related improvements. No other provision of law relative to warranties or defects applies if a builder has provided the minimum warranty contained in this bill, and no action lies in tort or negligence for any defect which is covered by the minimum warranty or excludable from it as provided in these provisions.

If adopted, these provisions would apply with respect to homes sold to initial purchasers after June of 1995.

Residential Landlord and Tenant Act (H. 3733, Rep. Elliott). This bill makes several revisions to the State's Residential Landlord and Tenant Act. Under these provisions, appraisals offered by licensed appraisers may be considered by the court in determining fair market rental value, and "security deposit" is defined as a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure full and faithful performance of all terms and conditions of the lease agreement. The bill also deletes an obsolete reference pertaining to notice under this act and prohibits a tenant from changing locks on his dwelling unit without the permission of the landlord. Additionally, the bill provides that a tenant may recover damages and obtain injunctive relief for unreasonable compliance by the landlord with the rental agreement or with general maintenance requirements (current law states that such damages or relief can be sought for any noncompliance by the landlord with those terms).

The bill also amends provisions pertaining to termination of a rental agreement because of fire and casualty damage. Currently, accounting for rent in event of termination or apportionment must be made as of the date of the fire or casualty; under this bill, however, such accounting for rent would be made as of the date of the fire or casualty unless the fire or casualty was due to the tenant's negligence or caused by the tenant. The bill also requires the tenant to reimburse the landlord for the cost to the

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latter of repairing damage, etc. caused by a tenant's failure to maintain his dwelling unit in a safe and reasonably clean manner. Finally, the bill specifies that a tenant who has voluntarily terminated his utilities and has an unexplained absence after default in payment of rent is considered to have abandoned his dwelling unit, with the "15-day" rule not applying (under current law, a tenant is considered to have abandoned his dwelling if he has an unexplained absence from his dwelling unit for 15 days after default in payment of rent).

Enforcement of Liens (H. 3741, Rep. Tripp). This bill deletes a reference of "intent to lien," as pertains to liens filed by a sub-subcontractor or supplier, and replaces that term with "furnishing labor or materials", such that the aggregate amount of a liens filed by a sub-subcontractor or supplier may exceed the amount due by the contractor to the subcontractor (to whom the sub-subcontractor or supplier has supplied labor, material or services) if the sub-subcontractor or supplier has provided notice of furnishing labor or materials, instead of notice of intent to lien. The bill also revises provisions pertaining to filing of a "notice of project commencement" for purposes of liens; under current law, a person entering into a direct agreement with, or with consent of, an owner for improvement of real property may file this notice with the clerk of court or register of mesne conveyances in the county(ies) where the project is located. This bill would require the entire notice of project commencement (not just the name and address of the contractor) to be posted at the job site, with failure to post this notice at a job site rendering inapplicable certain provisions governing recovery of liens and prorating of liens.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Person Upon Whom an Invasive Exposure-Prone Procedure Is Performed Must Know HIV Status and Disclose Status in Certain Situations (H. 3705, Rep. Fair). Under these provisions, a person upon whom an invasive, exposure-prone procedure (as defined by the Department of Health and Environmental Control) is scheduled to be performed should know his HIV antibody, HBsAg and HBeAg status and disclose this status to health care professionals rendering care, so that precautionary measures may be taken. If this procedure is to be performed on a person who does not know his status, then that person should have his blood tested for presence of HIV or HBV so as to protect the health care professionals providing care.

Conditions Under Which Persons Unable To Return to Work Are Entitled to Vocational Rehabilitation Services (H. 3709, Rep. Clyburn). Under these provisions, an employee who, for reasons of injury or medically-determined restrictions, is unable to return to the job(s) held at the time of injury, is entitled to vocational rehabilitation services as may be reasonably necessary to restore him to suitable employment. These services include retraining and job replacement. If these services are not voluntarily offered and/or accepted, either party may make application to the Workers'

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Compensation Commission for an order requiring the services. If, after giving all parties a chance to be heard, the Commission, by preponderance of the evidence, determines that the employee is unable to return to his prior employment, then the Commission must order the rehabilitation service or treatment to be provided at the employer's expense.

Vocational rehabilitation training, treatment or service as required under these provisions must not extend beyond 52 weeks, except in unusual cases, when by special order of the Commission, and after giving the parties a chance to be heard, the period may be extended by another 26 weeks. When these services require residence at or near a facility or institution away from the employee's customary residence, then the reasonable cost of the employee's board, lodging and travel must be paid by the employer.

The bill also requires the employer, during any period of rehabilitation services, to continue payment of temporary total compensation, with such compensation not deducted from any award of permanent disability pursuant to the State's Workers Compensation Law.

Conditions Under Which Dental Hygienists and Expanded Duty Dental Assistants Can Monitor Nitrous Oxide Anesthesia (H. 3711, Rep. Baxley). This bill allows a dental hygienist or an expanded duty dental assistant to monitor nitrous oxide anesthesia, provided the hygienist or assistant is certified and is under the direct supervision of a licensed dentist.

Conditions Under Which Dental Hygienists Can Administer Infiltration Anesthesia (H. 3712, Rep. Baxley). This bill allows dental hygienists to administer infiltration anesthesia, provided the hygienist is certified by the State Board of Dentistry and is under the direct supervision of a practicing dentist.

Commission for the Blind Transferred to the Governor's Office (H. 3738, Rep. Kirsh). This bill transfers the South Carolina Commission for the Blind, along with its employees, funds, property and contractual rights and obligations associated with the commission, to the Governor's Office. While under the governor's office, the commission's name is to be changed to the Division for the Blind. The Commission, currently consisting of 7 members, instead would be a Division under direct supervision of a 7-member panel, and in appointing members to the panel the governor would not need the advice and consent of the Senate (currently the governor appoints Commission members with the advice and consent of the Senate). These provisions would become effective upon the approval of the governor.

HIV Testing (H. 3744, Rep. Shissias). Under these provisions, a person who collects and anonymously submits a sample of their own body fluid or tissue for HIV (Human Immunodeficiency Virus) Infection is not required to report a positive test result, with the test results being confidential. The bill also requires the person or laboratory performing the test on an anonymous sample to report a positive HIV infection test result to the Department of Health and Environmental Control; however, the report may not

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contain information which identifies or could lead to identification of the subject of the report.

WAYS AND MEANS

Sales Tax Exemption for Machinery Used for Recycling (H. 3710, Rep. Keyserling). This bill provides a sales tax exemption for machines used in recycling tangible personal property for sale. For these purposes, "recycling" is any process by which materials that otherwise would become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or products (including composting) for sale.

\$150,000 Homestead Exemption for Owners Age 70 or Above (H. 3725, Rep. Moody-Lawrence). This bill allows a person who currently receives the \$20,000 homestead exemption to receive an additional homestead exemption equal to \$150,000 on that same property, provided that person has reached age 70 before the current property tax year. This \$150,000 homestead exemption also extends to a surviving spouse, in the same manner provided for the current \$20,000 homestead exemption. If adopted, this \$150,000 additional homestead exemption would apply to property tax years beginning after 1994.

Payment of Property Taxes by Installments (H. 3726, Rep. Moody-Lawrence). Current law allows a county governing body to permit persons to pay their property taxes in installments. This bill deletes that provision; in place of that provision, this bill allows a person to pay property taxes due on his residence (if the taxes are not paid by the mortgagee by escrow) in 3 installments, with this choice made by filing a notice with the county treasurer before March 1 of the tax year. Under this plan, the first installment would be due on May 1; the second would be due on September 1, and the final would be due by January 15 of the following year. The first and second installments each must equal one-third of the total property tax due on the property in the preceding year. If an installment is not received in a timely manner, then there must be added to the tax due for the tax year a penalty equal to 1 percent of the tax due on the property for the tax year for each month or portion thereof that the installment remains unpaid. This penalty, however, cannot exceed 5 percent of the tax due for the year and is considered part of the tax due on the property.

The bill provides that once a taxpayer chooses this installment payment method, he cannot revoke it before the succeeding tax year. However, change in ownership of the property is an immediate automatic revocation of this installment choice. If adopted, these provisions would apply for tax years beginning after 1995.

Payroll Deduction for Dues of the South Carolina Troopers' Association (H. 3731, Rep. Cooper). This bill authorizes, when requested by state

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employees, a payroll deduction from those employees for membership dues of the South Carolina Troopers' Association. These dues also may be deducted from state retirement benefits upon request of retirees.

Update of Reference Date for Adoption of Provisions of Internal Revenue Code (S. 285, Sen. Passailaigue). This bill updates the reference date whereby South Carolina adopts provisions of the Internal Revenue Code of 1986, so that the State adopts provisions of that Code as amended through December 31, 1995.

Sales Tax Exemption for Electricity Used by Cotton Gin Operators (S. 357, Sen. McGill). This bill provides a sales tax exemption for electricity used by cotton gins.

Child Care Credit Program (S. 548, Sen. Waldrep). Current law allows an employer to claim a child care tax credit equal to 50 percent of his capital expenditures but not more than \$100,000 for costs incurred in establishing a child care program for his employees. This bill expands the definition for expenditures which qualify for this tax credit, so as to include donations to a nonprofit corporation (as defined in the Internal Revenue Code) for purposes of establishing a child care program, and further provides that if credit is taken for donations by a corporation, then a deduction to arrive at the net income of the corporation is not allowed.

Interest Earned on State Highway Fund Must Be Credited to that Fund (S. 561, Senate Finance Committee). This bill requires interest earned from the State Highway Fund to be deposited to the credit of that Fund.

WITHOUT REFERENCE

1995-1996 General Appropriation Bill [State Budget] (H. 3362, House Ways and Means Committee). This bill is the proposed \$4.1 billion state budget for fiscal year 1995-1996 (running July 1, 1995 through June 30, 1996). The House began consideration of this measure the week beginning Monday, March 6.

Supplemental Appropriations from Fiscal Year 1994-1995 Surplus General Fund Revenues (H. 3690, House Ways and Means Committee). This joint resolution makes approximately \$96 million in supplemental appropriations from current year (i.e., 1994-1995) surplus general fund revenues. This (96 million figure) includes nearly \$88 million in FY 1994-1995 surplus set aside and \$8 million in lapsed funds from the Department of Revenue and Taxation. Appropriations of these surplus funds are as follows (see next page):

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(1) General Reserve Fund Payment-----	\$10,556,980
(2) Aid to Subdivisions---Comptroller General: Local Government Fund-----	8,679,747
(3) Colleges and Universities: Maintenance and Equipment-----	35,000,000
Phase in of Base Reduction-----	14,018,191
(4) Commission on Higher Education: Phase in of Base Reduction-----	98,220
(5) Department of Education: Fringe Equity-----	8,500,000
Bus Driver Bonus-----	1,500,000
(6) Health and Human Services: Services Fund for Emotionally- Disturbed Children-----	12,000,000
(7) Dept. of Archives and History: History Building-----	4,390,214
(8) Clemson PSA: Phase-in of Base Reduction-----	<u>1,136,276</u>

TOTAL APPROPRIATIONS:

\$95,879,628

If the \$95.9 million in revenues to be used for these appropriations are not available, then funding for all items listed above (except for the general reserve fund payment and aid to subdivisions) must be reduced proportionately to offset the deficiency. Appropriations for colleges and universities in this joint resolution must be distributed according to the higher education formula, except for \$458,036 of the portion for phase in of base reduction, which is not part of the formula. The Department of Education must develop a plan for distribution of bonus pay to bus drivers, with this bonus not a part of the employee's salary and not being earnable compensation for purposes of employer or employee contributions to the retirement system. Unexpended appropriations may be carried forward to succeeding fiscal years and expended for the same purposes.

Additionally, this joint resolution provides for a general fund appropriation of \$2.5 million each for construction of arenas at the University of South Carolina and in the City of Greenville, with these \$2.5 million appropriations contingent on receipt of \$5 million from the Southeast Compact for Low-Level Nuclear Waste and approval of the financial plan assuring the funding for construction of these arenas by the Budget and Control Board. Review by the Budget and Control Board is limited to assurance of the total fund availability for construction. If USC or Greenville do not present a plan for approval prior to adjournment of the General Assembly next year, then appropriations for those arenas are forfeited and lapsed.

Use of Live Nongame Fish on Edisto River (H. 3714, Rep. Rhoad). This bill authorizes for use as bait on the Edisto River live nongame fish with 9/0 or larger single-barbed set hooks.

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Annexation of Real Property in Multi-County Parks (H. 3736, Rep. H. Brown). This bill prohibits real property of a multi-county park titled in the name of a political subdivision of the State from being annexed unless the prior written consent of the governing body of the political subdivision holding title is obtained.

Lease Purchase or Financing Agreements Subject to Constitutional 8% Debt Limit Requirement (S. 48, Sen. Leatherman). This bill prohibits the State's political subdivisions (municipalities, counties, school districts, etc.) from entering into a financial agreement (other than an enterprise financing agreement, a lease purchase agreement for energy efficiency products, or a guaranteed energy savings contract) if the principal amount of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement exceeds 8 percent of the assessed value of taxable property of the political subdivision. However, this 8 percent limit may be exceeded if the financial agreement is approved by a majority of the entity's voters in a referendum. Additionally, if an entity has outstanding any financing agreement (other than an enterprise financing agreement) on the date of issuance of any limited bonded indebtedness pursuant to any bond act, then the amount of this limited bonded indebtedness plus the amount of the entity's other limited bonded indebtedness (when added to the principal balance under the entity's financial agreement[s]) cannot exceed the entity's constitutional debt limit except upon favorable vote by referendum of the entity's voters. The bill also provides that a payment made by the State pursuant to a financial agreement is deemed general obligation debt service subject to the State Constitution's debt service limitation.

For purposes of this bill, a "financing agreement" is a contract entered into after 1995 under the terms of which a governmental entity acquires use of an asset which provides for payments to be made in more than one fiscal year; that payments thereunder are divided into principal and interest components or which contain reference to any portion of any payment under the agreement being treated as interest; and that title to the asset will be in the name of or be transferred to the governmental entity if payments scheduled or provided for in the financing agreement are made (though this term excludes contracts entered into in connection with issues of general obligation or revenue bonds pursuant to the State's Constitutional debt limit). An "enterprise financing agreement" is one entered into to provide an asset for a governmental enterprise, revenues from which are expected to be sufficient to pay amounts due under the agreement.

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